

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BRYAN SEXTON, : 12 CIV 08984 (PAC)  
Plaintiff, : **AFFIDAVIT**  
- against - :  
DAVID DELLACATO, :  
Defendant. :  
----- X -----

CITY OF TORONTO )  
PROVINCE OF ONTARIO, CANADA )ss:  
 )

A. IRVIN SCHEIN, being first duly sworn, deposes and says as follows:

1. I am a senior partner of the law firm of Minden Gross LLP, attorneys for Jake Karam, Vladimir Shushkovsky, CC Capital Inc., and Red Star Poker, respondents in an arbitration proceeding (the "Arbitration") pending before the International Centre for Dispute Resolution ("ICDR"), a division of the American Arbitration Association. I am fully familiar with the facts and circumstances herein. This affidavit is submitted in opposition to Plaintiff's "Motion to Compel Production and Contempt."

2. Specifically, this affidavit is submitted in order to rebut several untrue allegations made by Plaintiff and his counsel about the documents produced by David Dellacato in response to a third-party subpoena issued in the Arbitration.

3. On November 12, 2012, Mr. Dellacato and I participated in a conference call regarding the third-party subpoena that was issued to Mr. Dellacato by the ICDR on November 5, 2012.

4. During that conference call, Mr. Dellacato informed me that he possessed certain emails and documents pertaining to his shareholder interests in CC Capital Inc. I advised Mr. Dellacato that he would have to produce all of the emails and documents that were responsive to the third-party subpoena in the Arbitration.

5. Since the third-party subpoena only directed Mr. Dellacato to deliver the responsive documents to Leslie Trager, counsel for Bryan Sexton in the Arbitration, I asked Mr. Dellacato if he could send me a copy of the documents that he possessed that were responsive to the third-party subpoena, and Mr. Dellacato agreed to do so.

6. I received the responsive documents from Mr. Dellacato by November 14, 2012.

7. In an email dated November 16, 2012, I thanked Mr. Dellacato for providing me the responsive documents and advised him to deliver the responsive documents before the deadline set forth in the third-party subpoena, which was December 5, 2012.

8. Mr. Dellacato replied to my November 16 email later that day and asked me to return the documents to him, because he was experiencing computer problems in the aftermath of Hurricane Sandy.

9. On November 16, 2012, I was out of the office and therefore directed my assistant to send a courier package to Mr. Dellacato returning a copy of all of the documents that Mr. Dellacato sent me in the identical order and condition in which the documents originally arrived. A copy of the November 16, 2012 email exchange between myself, Mr. Dellacato and my assistant is attached hereto as Exhibit A.

10. I did not alter or destroy any of the documents that Mr. Dellacato sent me.

11. I did not remove any of the documents that Mr. Dellacato sent me.

12. I did not add any documents to the set of documents that I received from Mr. Dellacato.

13. Any allegation that I, anyone working under my supervision, or any of the respondents who I represent in the Arbitration either provided or somehow altered the set of documents that Mr. Dellacato produced in the Arbitration is completely false.

Dated: January 2, 2013

  
A. Irvin Schein

Sworn to before me this  
2 day of December, 2012

  
A. Irvin Schein  
Notary Public

## **EXHIBIT A**

**From:** Irvin Schein  
**Sent:** Friday, November 16, 2012 12:25 PM  
**To:** Jennifer Baggs  
**Subject:** FW: arbitration

please courier a copy to him thx

**A. IRVIN SCHEIN**  
T: 416.369.4136

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**From:** David Dellacato [mailto:[shooterdell@aol.com](mailto:shooterdell@aol.com)]  
**Sent:** Friday, November 16, 2012 12:24 PM  
**To:** Irvin Schein  
**Subject:** Re: arbitration

Thanks.. Any possibility you can send those documents back..or send back a copy.. Having pc issues from the storm.. Thanks

David Dellacato  
3 Evergreen Lane  
Monroe CT. 06468

Dave

On Nov 16, 2012, at 11:08 AM, Irvin Schein <[ISchein@mindengross.com](mailto:ISchein@mindengross.com)> wrote:

Thanks for the documents. You can proceed to deliver a set to the office of the arbitrator any time on or before the due date.  
Your cooperation is greatly appreciated.

<MindenGross\_Logo.jpg>

**A. IRVIN SCHEIN\***  
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Save contact details: [A. Irvin Schein](mailto:ISchein@mindengross.com)  
\*on behalf of Schein Professional Corporation

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